

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number 018360/234317

RECEIVED
CENTRAL FAX CENTER

(filed with the Notice of Appeal)

JUL 14 2006

Application Number 09/851,480

Filed May 9, 2001

First Named Inventor Florence

Art Unit 3623

Examiner Jeanty, Romain

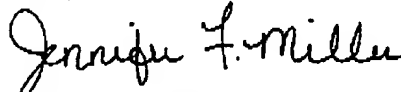
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

Respectfully submitted,



Jennifer F. Miller

Registration No. 56,278

Date

7/14/2006

Customer No. 00826

ALSTON & BIRD LLP

Bank of America Plaza

101 South Tryon Street, Suite 4000

Charlotte, NC 28280-4000

Tel Atlanta Office (404) 881-7000

Fax Atlanta Office (404) 881-7777

CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the US Patent and Trademark Office at Fax No. 571 273-8300 on the date shown below.


Laisha Richardson

Date

7/14/06

JUL 14 2006

PATENT
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 09/851,480 Confirmation No.: 3771
Applicant(s): Florence
Filed: May 9, 2001
Art Unit: 3623
Examiner: Jeanty, Romain
Title: METHOD AND SYSTEM OF DELIVERING ITEMS USING
OVERLAPPING DELIVERY WINDOWS

Docket No.: 018360/234317
Customer No.: 00826

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REASONS FOR REQUESTING PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant hereby submits its Remarks in support of its Pre-Appeal Brief Request for Review. Applicant requests Pre-Appeal Brief Review for the following reasons.

A. Outstanding Rejection

In the Office Action dated March 15, 2006, Claims 1-2, 4, 9-11, 16, 20-21, 24, 29-30 and 40 of the above-identified application were rejected under 35 U.S.C. 103(a). In particular, as noted on Page 11 of Applicant's Amendment dated December 16, 2005 ("the December 16th Amendment"), Claims 1, 2, 4, 9-11, 16, 24, 29 and 40 were rejected as unpatentable over U.S. Patent No. 6,085,170 to Tsukuda ("*Tsukuda*") in view of an article in Traffic World Magazine entitled "Core Competency" written by David Biederman ("*David*"). In addition, as noted on Page 18 of the December 16th Amendment, Claims 20, 21 and 30 were rejected as unpatentable over *Tsukuda* in view of *David* and further in view of U.S. Patent No. 6,879,962 to Smith et al. ("*Smith et al.*").

Applicant respectfully asserts that none of the references cited, whether viewed alone or in combination, teach or suggest each recitation of the pending claims. In particular, none of the references teach or suggest offering a plurality of time windows, or a subset of the plurality, to a recipient as available times for delivery of an item, wherein

LEGAL01/13000715v1

the plurality, or subset, includes at least two sequential time windows and at least one overlapping time window that overlaps a portion of each of the sequential time windows.

B. Use of Overlapping Time Windows Provides Novel Solution to Known Problem

As noted on Page 13 of the December 16th Amendment, citing Page 10, lines 9-16 of the Specification, use of overlapping time windows, as opposed to simply using sequential time windows, has been shown to significantly increase the number of times a driver stops in a given hour to deliver items (i.e., the number of Stops Per On Road Hour (SPOR)). This, in turn, decreases the number of drivers required to achieve the same number of deliveries in a given amount of time.

As further noted in the Interview Summary included on Page 11 of Applicant's Amendment dated June 14, 2006 ("the June 14th Amendment"), use of overlapping time windows, among other things, provides a customer with more choices, while not limiting the amount of time within which the driver can deliver the package. To illustrate, suppose that a customer (i.e., the recipient of a package) is offered a choice between having an item delivered between 9:00 AM and 11:00 AM and between 11:00 AM and 1:00 PM (i.e., two sequential time windows). If the customer is not available until 10:00 AM, he or she will be forced to select the 11:00 AM to 1:00 PM time slot, even though he or she is available and could have received the package earlier. One obvious option for alleviating this problem would be to simply shorten the time periods offered. For example, the customer may be offered time slots 9-10:00 AM, 10-11:00 AM, 11:00 AM – 12:00 PM, and 12-1:00 PM. However, shortening the time period within which a driver may deliver a package may cause problems for the driver and the delivery company. It limits their flexibility in selecting the most efficient route between stops and may even force the driver to go back to different areas multiple times within a given day just to make sure he or she delivers the packages within the confined window of time.

A better solution or option for alleviating the problem is to offer overlapping time windows – i.e., at least two sequential time windows (e.g., 9:00 AM – 11:00 AM and 11:00 AM – 1:00 PM) and at least one overlapping time window that overlaps a portion of each of the sequential time windows (e.g., 10:00 AM – 12:00 PM). The advantage of this method, which is claimed in Applicant's pending claims, is that it allows the

customer to have more choices, yet does not limit the amount of time within which the driver can deliver the package. Continuing the above example, the customer is able to select the 10:00 AM – 12:00 PM time slot, thus not having to wait until possibly 1:00 PM before the package is delivered, yet the driver is provided a longer amount of time within which to work.

As noted on Page 12 of the June 14th Amendment, in response to the above description of the advantages that can be gained by practicing the claimed method, the Examiner stated that these advantages were not described in the claim. However, it is Applicant's contention that the advantages gleaned from the use of a claimed method need not be specifically detailed in the claim itself and, instead, are merely the natural byproduct of performing the novel steps of the claimed method.

C. References, Alone or Combined, Do Not Teach or Suggest Each Recitation of the Pending Claims

1. Tsukuda Fails to Teach or Suggest Overlapping Time Windows

As noted on Page 13 of the December 16th Amendment, *Tsukuda* discloses a "delivery managing system for managing delivery of goods from a distribution center through an agent to a receiver." (*Tsukuda*, Abstract). *Tsukuda* does not provide any other description of the delivery time other than stating that it is a "date and time" for delivery. *Tsukuda* does not disclose delivery times of any particular duration or relation (i.e., how the delivery times relate to one another). *Tsukuda* does not disclose the use of a time window that includes a portion of two or more sequential time windows.

2. David Fails to Teach or Suggest Overlapping Time Windows

David similarly does not disclose the use of a time window including a portion of two or more sequential time windows. In fact, as noted on Page 14 of the December 16th Amendment, *David* specifically recognizes, but does not solve, a problem that is addressed by the present invention. In general, *David* discusses online retailers that desire to keep fulfillment operations in-house and, therefore, are scrambling to expand their own facilities (i.e., distribution and warehousing capabilities) to avoid e-commerce

backlogs. With respect to Peapod, Inc., the article discusses “routing challenges” posed by the online grocery environment “that are different than the logistics [John Caltagirone, Peapod’s logistics and operations chief] is used to.” Specifically, the article states:

For example, customers select delivery times within two-hour windows. The challenge is getting enough density on each route and time slot. ‘If we are in the neighborhood at 7 a.m., we don’t want to come back at 3 p.m. for someone else.’ [Caltagirone] said. ‘The marketing challenge is to entice others to that window. It is different than routing where you have set times from store to store.’ (*David*, pg. 2).

While *David* does disclose enabling the customers to “select delivery times within two-hour windows,” *David* does not teach or suggest providing each customer with a plurality of time windows including at least two sequential time windows and an overlapping time window that overlaps a portion of each of the sequential time windows. Instead, *David* outlines a recognized problem in the art of “getting enough density on each route and time slot” and of enticing customers to particular time windows, yet does not provide a solution to this problem. The present invention provides this solution through the use of time windows that include a portion of two or more offered sequential time windows.

3. Smith Fails to Teach or Suggest Overlapping Time Windows

While not relied upon by the Examiner for so teaching, Applicant respectfully asserts that *Smith et al.* further does not teach or suggest use of overlapping time windows for delivery of an item. Applicant further submits, as noted on Page 18 of the December 16th Amendment, that *Smith et al.* does not teach or suggest the elements for which it is cited. In particular, Applicant respectfully submits that, with respect to Claim 20, *Smith et al.* does not teach or suggest “determining which time windows have associated with them the least cost of service in making the delivery.” In addition, with respect to Claim 21, *Smith et al.* further does not teach or suggest “determining whether the cost of delivering the item within a time window in the plurality is less than a monetary threshold.”

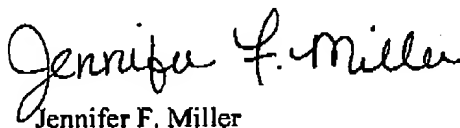
Smith et al. discloses a logistics method “that provides computer programming for controlling a plurality of transports to supply a plurality of delivery locations from one or

more bases.” (*Smith et al.*, Abstract). According to *Smith et al.*, “[g]iven information about each transport such as load capacity, fuel level, location intelligence, and the like ... and information about the materials, manifest status, and other factors, potential least cost delivery routes using capable transports can be automatically produced for selection by the operator.” (*Id.*). *Smith et al.* does not teach or suggest delivery time windows offered to recipients for delivery of an item, let alone determining which time windows to offer based on either the least cost of delivering the item or a cost less than a monetary threshold.

D. Conclusion

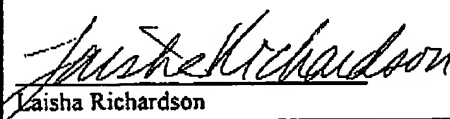
Based on the foregoing, Applicant respectfully asserts that the claimed invention is patentable over the cited references. Accordingly, reversal of the rejection and remand to the Examiner with instructions to issue a Notice of Allowance for all pending claims is requested.

Respectfully submitted,



Jennifer F. Miller

Reg. No. 56,278

<p>Customer No. 00826 ALSTON & BIRD LLP Bank of America Plaza 101 South Tryon Street, Suite 4000 Charlotte, NC 28280-4000 Tel Atlanta Office (404) 881-7000 Fax Atlanta Office (404) 881-7777</p>	<p>CERTIFICATION OF FACSIMILE TRANSMISSION</p> <p>I hereby certify that this paper is being facsimile transmitted to the US Patent and Trademark Office at Fax No. (571) 273-8300 on the date shown below.</p> <p> 7/14/06 Laisha Richardson Date</p>
---	---